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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,644	07/06/2006	Lothar Pasch	251102-1040	1957
24504 7590 01/05/2010 THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP 600 GALLERIA PARKWAY, S.E. STE 1500 ATLANTA, GA 30339-5994				
EXAMINER ATKISSON, JIANYING CUI				
ART UNIT		PAPER NUMBER		
3742				
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01/05/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/550,644

**Applicant(s)**

PASCH, LOTHAR

**Examiner**

JIANYING ATKISSON

**Art Unit**

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 September 2005.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-3, 7 and 21 is/are rejected.  
7) ☐ Claim(s) 4-6, 8-20 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 23 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/SB06)  
Paper No(s)/Mail Date 11/7/05  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

Claims 4-6, 8-20 are objected to under 37 CFR 1.75(c) as being in improper dependent form because a multiple dependent claim must be in the alternative and can not depend on other multiple dependent claim. See MPEP § 608.01(n). Claim 3 is a proper multiple dependent claim, and claims 4-6, 8-20 are in multiple dependent claim form and depend on other multiple dependent claims and thus improper. Accordingly, claims 4-6, 8-20 have not been further treated on the merits.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 22-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 22-23 recite the limitation "one or more of the characterizing measures described in the attached description and/or shown in the attached drawings". It is not clear which characterizing measure(s) is/are included in the claim, the boundary of the claims are uncertain. Thus claims 22-23 have not been further treated on the merits.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 7, 21 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 2,451,329, here after '329.

Regarding claim 1, '329 teaches a device for forming a dough portion (Fig. 1) comprising a pressure roller (upper roller 8) and a counter roller (lower roller 8) placed below it for in between them rolling out the dough portion (D) into a dough slice, wherein the device comprises a conveyor belt (1) for conveying and at least in the direction of conveyance supporting the dough slice to a further treatment device (9 and 2) during and after rolling out, wherein the conveyor belt is passed through between the pressure roller and the counter roller and abuts the counter roller.

Regarding claim 2, '329 teaches that the device according to claim 1, wherein the conveyor belt supports the dough slice in the further treatment device (shown in Fig. 1).

Regarding claim 7, '329 teaches that the device according to claim 2, wherein the further treatment device comprises a device (9 and 2) for rolling up the dough slice (page 3, 3<sup>rd</sup> par.).

Regarding claim 21, '329 teaches an assembly (Fig. 1) for forming a dough portion comprising: a device for rolling out a dough portion comprising a pressure roller (upper roller 8) and a counter roller (lower roller 8) placed below it, wherein the counter roller is adapted as a first circulating roller for a conveyor belt (Fig. 1 shows that the lower roller 8 is one of the circulating rollers of conveyor belt 1), a further treatment device comprising a second circulating roller (the rollers inside the belt 1 on the right) for

a conveyor belt, and a conveyor belt (1) that is wrapped around the first and second circulating rollers for conveying and supporting the dough portion during and after rolling out to and in the further treatment device.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE 2,451,329, here after '329, and in view of applicant's admitted prior art (AAPA) on page 1 of the instant specification.

Regarding claim 3, '329 teaches the limitations of claims 1 and 2, but does not teach that the counter roller has a diameter that is, preferably several times, larger than the diameter of the pressure roller.

However in the AAPA, applicants admits that a known device for forming a dough portion is provided with a small pressure roller and a large counter roller underneath it. The diameter ratio between the counter roller and the pressure roller is 4:1. In the course of time, this ratio experimentally proved to be a properly functioning ratio.

Thus it would have been obvious to a person of ordinary skill in the art at the time of invention to use a counter roller with a diameter several times larger than the

diameter of the pressure roller because such a ratio is experimentally proved to be function properly.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JIANYING ATKISSON whose telephone number is (571)270-7740. The examiner can normally be reached on Mon-Thur. 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on (571)-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. A./  
Examiner, Art Unit 3742

/Quang T Van/  
Primary Examiner, Art Unit 3742